



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 09/809,583 | 03/15/2001 | Junichiro Nishi | 01134 | 5904 |
| 7590 01/19/2006 | | | EXAMINER | |
| JAMES G. O'NEAL KLEIN, O'NEAL & SINGH 2 PARK PLAZA, SUITE 510 IRVINE,, CA 92614 | | | MILEF, ELDA G | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3628 | |

DATE MAILED: 01/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--------------------------------------|---|--|
| Office Action Summary | Application No. 09/809,583 | Applicant(s) NISHI, JUNICHIRO | |
| | Examiner Elda Milef | Art Unit 3628 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Japan on 3/15/2000. It is noted, however, that applicant has not filed a certified copy of the Japan 2000-072260 application as required by 35 U.S.C. 119(b).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Friedland et al. (6,449,601).

Re claim 1: Friedland et al. teaches a real-time auction (SEE Friedland et al. column 1, lines 4-10 "The present invention relates to the distribution of live auctions over a communications medium to remote bidders, and, in particular, to

Art Unit: 3628

a method for efficiently monitoring a live auction, distributing real-time information concerning the live auction to remote bidders, and collecting bids from remote users and submitting the collected bids at the live auction. ");

system comprising: a first computer operated by an auction organizer (SEE Friedland et al. figure 4 item 402 "computer 402" auction console program runs in 402 located on-site at the live auction);

a second computer operated by an assessor who exhibits and sells products (SEE Friedland et al. column 7 line 61- column 8, line 9, "FIG. 3 illustrates, at a high level, the DLA methodology for implementing Internet-based live auctions. The live auction occurs in front of a live audience of bidders 302. The auction is conducted by one or more auctioneers 304. A DLA human proxy 306 is also present within the in-person audience of bidders. The DLA human proxy 306 monitors the auction, including bids made by in-person bidders as well as statements made by the auctioneer 304, and enters the bids and statements into the DLA auction console running on a computer system 308. In a preferred embodiment, a laptop PC may be used to run the DLA auction console for reasons of ease of use and portability. The information regarding the status of the auction entered by the

Art Unit: 3628

DLA human proxy 306 into the DLA auction console running on the computer 308 is transferred via the Internet 310 to the DLA auction server 312.");

a plurality of third computers operated by buyers (SEE Friedland et al. figure 4, items 428-437 "a remote bidders computers");

a fourth computer in a center for processing, (SEE Friedland et al. figure 4, item 404 "the auction server program running on the server computer 404 is directly interconnected via a communications network 410 to a number of root-level collector/ redistributer nodes 412 and 414);

all of the computers being connected to an online system for receiving and sending data on an auction (SEE Friedland et al. figure 4, item 410, interconnected via a communications network 410 to a number of root-LEVEL collector/ redistributer nodes 412 and 414);

the auction being performed as follows: step 1: the buyers bid a price for a product during a first predetermined time period, with the bid price being transmitted to the first computer (SEE Friedland et al. figure 13, item 1304 "BID FROM USER");

Art Unit: 3628

step 2: status of bidding on the product is transmitted to all of the computers over the online system (SEE Friedland et al. figure 13 item 1310 "UPDATE AUCTION STATUS SCREEN");

step 3: the organizer, the assessor and the buyers confirming the bidding status during a second predetermined time period (SEE Friedland et al. item 1308 "STATUS FROM AUCTION SERVER");

step 4: if there is more than one bid above a reserve price for the product set by the assessor, step 1, step 2 and step 3 are repeated a predetermined number of times until there is only one bid left (this step would be inherent if you have two equal bids and only one item to sell), the one bid left being the successful bidder (again inherent that the highest bidder get item for sale).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Art Unit: 3628

3. Claims 2-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Friedland et al. (6,449,601) in view of Alaip et al. (6,230,146) in further view of Fritsch et al. (US 2002/0023039).

Re claim 2: Friedland et al. does not illustrate the real-time auction system of claim 1 wherein screens of the third computers have a time indicator, a bid price indicator and a bid button; and wherein during the first predetermined time period a gradually increasing price is displayed on the bid price indicator from a start price to a ceiling price while the time indicator rises at the same time and at the same speed.

However Alaia et al. teaches in column 10, lines 10-20 "Bidder-specific bid rules enable an auction coordinator to maximize the competitive nature of an auction. In a downward auction, each bidder is assigned an individual bid ceiling by the buyer. This bid ceiling sets a maximum bid price that can be submitted by a supplier. The bid ceilings are advantageous to the buyer because it prevents a bidder from withholding pre-auction bids from the market. And figure 68 teaches current time 10:27 AM and closing time of each auction)

And Fritsch et al. (US 2002/0023039) teaches in ABSTRACT: "An auction system and method is disclosed which displays a graphical representation of a buy bid and ask bid along a scale.

Art Unit: 3628

A user may enter a new bid by moving the computer screen cursor to a position on the scale and initiating an entry command. The system then reconfigures the scale to reflect the newly entered bid." (reads on bid button) and SEE section [0030] "With continued reference to FIG. 3, there is illustrated an example of an automatic auction wherein the starting sell offer (bid) is \$50.00 as shown in current offer amount window 320, and the starting buy bid is \$40.00 as shown in the buy current bid amount window 370. The system automatically set the new sell offer amount identifier window 340 at the next decreasing incremental level of \$49.00 and the new buy bid identifier window 390 at the next increasing incremental level of \$41.00. Graphically, the sell bid selector 310 also incrementally illustrates the prospective new sell offer amount of \$49.00. It should be noted that the difference between the current offer of \$50.00 and the new sell offer amount of \$49.00 is colored or shaded, herein cross-hatched, differently from that of the current bid so that users can readily identify the difference. Similarly, the difference between the current bid amount of \$40.00 and the new buy bid amount of \$41.00 is graphically indicated by difference in color, shading or as herein cross-hatching. And SEE section [0031]. As shown in FIG. 4, a user, in this example a buyer, may disregard the automatic

Art Unit: 3628

incremental increase in the next sell offer or buy bid shown 'by the cross hatched section in order to increase the user's bid in an amount greater than the one incremental level. To do so, the user moves the screen cursor 435 to the incremental level upon the buy bid selector 360 which represents the user's desired buy bid. Herein, the buyer has bypassed the automatic buy bid of \$41.00 and has instead moved the cursor to the \$44.00 increment level upon the buy bid selector 360. The user then initiates an entry signal by conventionally clicking upon the computer mouse left click key. Entry results monetary values in the graphical incremental level are shown in the new buy bid amount identifier window 390. Thus, the user is able to confirm the desired entry both graphically upon the buy bid selector 360 and numerically within the new bid amount identifier window 390.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Friedland et al. graphical user interface of the bidder by using the the features taught by Fritsch et al and Alaia et al. because the improved GUI would have provided more information to the user and would have made it easier to use.

Re claim 3: Friedland and Alaia do not specifically disclose the real-time auction system of claim 2 wherein the buyers may click on the bid button when the bid price indicator

Art Unit: 3628

reaches a price the buyers want to bid. Fritsch however, discloses ("the user moves the screen cursor 435 to the incremental level upon the buy bid selector 360 which represents the user's desired buy bid.. The user initiates an entry signal by conventionally clicking upon the computer mouse left click key.")-SEE Fritsch et al section (0031). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Friedland and Alaia to include the user clicking on the bid price when the incremental price selector reaches a desired price as shown by Fritsch in order to avoid errors associated with typing incorrect bid amounts and in order to expedite and facilitate the bidding process.

Re claims 4, 8, 9: Friedland et al. teach the real-time auction system of claims 3, 1 and 2 wherein the buyers may enter a pre-entered bid before the auction opens; the pre-entered bid being entered by the buyers when the auction is open and being treated as maximum bid prices (SEE Friedland et al. figure 2 item 206 PREBID).

Re claims 5, 10-13: Friedland et al. teach the real-time auction system of claims 4, 1, 2, 3, wherein if no bid is above the reserve price for the product set by the assessor, the

Art Unit: 3628

assessor can designate the buyer who bid the highest price as the successful bidder on the second computer (SEE Friedland et al. figure 2 item 240 "SUFFICIENT BID").

Re claims 6, 14-18: Friedland et al. teach the real-time auction system of claim 5, 1, 2, 3, 4, and wherein a first bidder who enters a price that is above the reserve price for the product set by the assessor can see an indication that the first bidder was the first to enter such a price (-see col. 3 lines 17-22, col.6 lines 56-60 ("sufficient bid"), col. 13, lines 29-31, Fig. 9, Fig. 13 (1310)).

Re claims 7, 19, 20: Friedland et al. teach the real-time auction system of claims 6, 1, and 2 further including electromagnetic media for storing computer programs used by the first computer, the second computer, the plurality of third computers and the fourth computer (SEE fig. 4 , item 406 "DATA BASE", col. 8, lines 51-67).

Response to Arguments

4. Applicant's arguments filed 9/16/2005 have been fully considered but they are not persuasive.

Regarding the Applicant's suggestion that the examiner admits that the primary reference Friedland fail to disclose or

Art Unit: 3628

teach step 4 as set forth in independent claim 1. Although Friedland do not explicitly disclose repeating steps 1-3 a predetermined number of times until there is only one bid left; the one bid left being the successful bidder as stated in claim 1, Friedland do teach the transitioning of states from pre-sold to fair warning to last chance to sold within a predetermined time interval-see col. 6 line 57 through col. 7 line 11, and Fig. 2. It is inherent that the steps may be repeated a number of times within a predetermined time interval. In considering disclosure of reference patent, it is pertinent to point out not only specific teachings of patent but also the reasonable inferences which one skilled in the art would logically draw therefrom. *In re Shepard*, 138 USPQ 148 (CCPA 1963).

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., bidding for such item will not be automatic as called for in Applicant's claim 1) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

5. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

Art Unit: 3628

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elda Milef whose telephone number is (571)272-8124. The examiner can normally be reached on Monday - Friday 9:15 am to 5:45 pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hyung Sough can be reached on (571)272-6799. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 09/809,583

Page 14

Art Unit: 3628



HYUNG SOUGH
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600